BOOKS AND PERIODICALS.

"RIGHT TO PRIVACY." — Few recent cases have caused more comment and criticism than the case lately decided by the New York Court of Appeals, in which the plaintiff, a young woman of attractive appearance, was refused an injunction to restrain the use of her likeness as a trade advertisement. *Roberson* v. *Rochester, etc., Co.*, 171 N. Y. 538. The critics generally deplore the result, but they differ as to where to lay the blame. Of those who criticise the court adversely, Mr. Gordon, writing in the August number of the CANADIAN LAW TIMES, is a fair exponent. *The Right of Privacy*, by Wm. Seton Gordon, 22 Can. L. T. 281 (Aug., 1902). To his mind the right to privacy is an existing right, distinct alike from the right to reputation and from property rights. He entertains the view that protection might well be granted by means of the "undoubted jurisdiction of equity to restrain unfair practices in trade." This suggested basis of the alleged right to privacy seems extraordinarily narrow, since conceivably there may be serious infringements of that right entirely apart from trade matters. Furthermore jurisdiction over unfair practices in trade forms only one manifestation of the power of equity to restrain irreparable injury to person or property. For in spite of the fact that equity jurisdiction arose in questions involving property only, it is now well settled that it has extended to protect personal rights. See *Pierce* v. *Proprietors of Swan Point Cemetery*, 10 R. I. 227. The personal right to privacy, the right to be let alone, is one which must ultimately be recognized in these days when curiosity-seekers are rampant. The New York court was avowedly fearful of establishing a precedent which would open the door to a multitude of frivolous claims. But this danger seems to have been magnified, as the plaintiff must always have the burden of proving actual damage or suffering, and the court would have that large discretion necessarily inherent in courts of equity.

Of those who consider that the law was properly administered, and that legislative action is necessary to give the plaintiff legal rights, Mr. Adams, counsel for the defendant, is the strongest advocate. See *The Law of Privacy*, by E. L. Adams, 175 No. Am. Rev. 361. He suggests that the subject involves an extension of the law of libel, to cover the redressing of spiritual as well as of material wrongs. From this premise he concludes that, apart from any question of a remedy at law, under the acknowledged limitations of equity no injunction could possibly have been granted. That the New York courts will not enjoin the publication of a libel is now, unfortunately, settled by the recent case of *Marlin Fire Arms Co.* v. *Shields*, 171 N. Y. 384. This decision is another exemplification of judicial reluctance to establish a new, though desirable, precedent. Whether or no the alleged right to privacy is analogous to the right to reputation, it seems certain that some remedy must be found for such abuses as are declared legal by the New York decision. It was to be hoped that the "courts of conscience" would prove elastic enough to meet this modern need. But apparently such is not to be the case, and we must look hereafter to the legislatures.

For a more thorough discussion of this subject, see 4 HARV. L. REV. 193.

MUTUALITY OF REMEDY IN SPECIFIC PERFORMANCE. — The question whether mutuality of remedy is a prerequisite of specific performance is made the subject of a recently published article. *Mutuality in the Enforcement of Contracts for Personal Service*, by Henry W. Bond, 55 Central L. J. 64 (July, 1902). The conclusion is there reached that "according to the established law" mutuality of remedy is unnecessary; in other words, that

the contract need not be one which equity would enforce at the suit of either party.

It is usually said that such mutuality is essential. See *Flight* v. *Bolland*, 4 Russ. 298; *Norris* v. *Fox*, 45 Fed. Rep. 406; FRY, SPEC. PERF., 3d ed., 215. The courts have, however, always applied the rule cautiously, and many jurisdictions have disregarded it in several classes of cases. Among these are cases in which only the defendant has signed a memorandum sufficient under the Statute of Frauds, and those in which the plaintiff is a married woman who might, were she the defendant, defeat a bill for specific performance by avoiding her contract. *Hatton* v. *Gray*, 2 Ch. Cas. 164; *Fennelly* v. *Anderson*, 1 Ir. Ch. Rep. 706. But in spite of such exceptions the rule in its broadest form is still frequently applied both in contracts involving personal service and elsewhere. *Welty* v. *Jacobs et al.*, 171 Ill. 624; *Solt* v. *Anderson*, 89 N. W. Rep. 306 (Neb.). The statement, therefore, that mutuality of remedy is unnecessary "according to the established law" seems questionable.

While the author's statement of the law is perhaps inadequate, his general treatment is suggestive. The doctrine as broadly stated is technical, and if indiscriminately applied would sacrifice the justice of particular cases to the maintenance of a rigid rule. It is true that in many instances where a decree of specific performance would work hardship on the defendant, the principle of mutuality is properly invoked to prevent an inequitable result; for example, when the defendant has contracted to do an immediate act in return for the plaintiff's promise to render personal service in the future, — a promise which, of course, a court of equity would not specifically enforce. Here equity properly declines to grant its extraordinary relief against a defendant who has, in his turn, no similar assurance that the plaintiff will fulfill his promise. *Alworth* v. *Seymour*, 42 Minn. 526. But from such instances the doctrine of mutuality would seem no longer to exist as a distinct and independent principle, but to be merely an expression or application of the fundamental rule that a court of equity will never allow itself to be made an instrument of injustice. On this view, apparently, specific performance should be refused for lack of mutuality of remedy only where, on the facts of a particular case, such mutuality is necessary to carry out the objects of the contract with fairness to both parties. So if the decree would in effect compel performance by both parties, it should not be held an objection that performance by the plaintiff was not at first specifically enforcible, as in the case of coverture cited above. This principle apparently underlies the decisions in a number of jurisdictions. *Fennelly* v. *Anderson*, *supra*; *Borel* v. *Mead*, 3 N. Mex. 39. It also seems to be endorsed in a recent Pennsylvania case, which is adopted as the text of the article referred to above. *Philadelphia Ball Club* v. *Lajoie*, 51 Atl. Rep. 973 (Pa.). While, therefore, it cannot be said to be settled law that mutuality of remedy is required only when the just solution of the case in question demands it, there appears to be a tendency toward the adoption of that view.

It may be added that the question of mutuality discussed in the case last cited is not the ordinary one as to mutuality of remedy. The contract there contained a provision that the plaintiff might at any time end it on ten days' notice. It was urged that this provision deprived the contract of mutuality. A similar objection has been held fatal in other jurisdictions. *Rust* v. *Conrad*, 47 Mich. 449. But the decision in the Pennsylvania case seems the sounder, as it fulfills the terms of the contract without hardship on either party. It is also supported by several other decisions. *Franklin, etc., Co.* v. *Harrison*, 145 U. S. 459; *Singer S. M. Co.* v. *Union, etc., Co.*, Holm. (U. S. Circ. Ct.) 253.

THE COAL MINES AND THE PUBLIC. A Popular Statement of the Legal Aspects of the Coal Problem, and of the Rights of the Consumers as the Situation exists September 17, 1902. By Heman W. Chaplin. Boston & New York: J. B. Millet Company. 1902. pp. 63.

In the midst of arms the laws are silenced; that is the danger in time of industrial storm as it is in time of military stress. The fear at the time this